



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



41

FILE:



Office: CLEVELAND

Date: JUN 28 2007

MSC 05 274 11668

IN RE:

Applicant:



APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, Cleveland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had failed to establish eligibility to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements. Specifically, she failed to prove by a preponderance of the evidence that she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Immigration and Nationality Act, and is otherwise eligible for adjustment of status under this section. As a result, the director denied the application.

On appeal, the applicant attempted to explain her responses during her interview with a Citizenship and Immigration Services (CIS) officer and requested time to provide additional documentation.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant for adjustment to temporary resident status must establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An applicant for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation and its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the

United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on July 1, 2005. At question #2 of the Form I-687 Supplement, where applicants were asked whether they entered the United States before January 1, 1982 and then resided in a continuous unlawful status, except for brief absences, from before 1982 until the date they were turned away by the Immigration and Naturalization Service, the applicant answered "yes." At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed only [REDACTED], Cincinnati, Ohio from August 2002 to May 2005; and [REDACTED], Cincinnati, Ohio from June 2005 to the present time. The applicant's failure to list any residences in the United States prior to August 2002 casts doubt on her assertion on the Form I-687 Supplement that she entered the United States prior to January 1, 1982 and resided continuously in the United States during the statutory period. At part #33 where applicants were asked to list employment in the United States, the applicant only listed employment with Fifth Third Bank in Cincinnati, Ohio, and provided no dates for this employment. The applicant submitted no additional documentation in support of her application.

In denying the application, the director referred to the applicant's I-687 interview with a CIS officer that took place on March 30, 2006. The director explained that the applicant had testified in the interview that she had no other evidence to submit in support of her application. The director also explained that the applicant was unable to name the individual with whom she had come to the United States and with whom she claimed to have lived for five to six years. As a result, the director found that the applicant failed to establish eligibility for adjustment to temporary resident status.

On appeal, the applicant explained that she was under stress and experiencing fear during her interview. She attributed her fear to having been alone in the United States for so many years with no one to help her. Her stress caused her to be unable to provide any addresses in the interview. The applicant's explanation for her inability to provide information during her interview with a CIS officer is found to be unreasonable under the circumstances. On appeal, the applicant also asked for additional time to return to New York and provide additional information and documents. The applicant did not specify the information and documents she would obtain. In addition, as of the date of this decision, the applicant has failed to submit any evidence in support of her application.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted a written application that does not substantiate her claim of residence during the statutory period. The applicant provided no evidence that she entered the United States prior to 1982, other than her assertion to this effect on the Form I-687 Supplement.

The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the limited nature of the applicant's statements on Form I-687 and the applicant's failure to provide any supporting documentation, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.